

CAL-NEV TAHOE BASIN FIRE COMMISSION SUMMARY MINUTES

January 15, 2008

Sierra Nevada College

Co-Chair Mr. Rogich noted that there had been a request to take some of the public comments in a different order than indicated on the agenda. Without objection, he said it this would be done.

1. Call to Order – Roll Call

Present:

Co-Chairs Kate Dargan and Sig Rogich, Commissioners Michael Brown, Bob Davidson, Ruben Grijalva, Bud Hicks, John Koster, Ron McIntyre, Jeff Michael, Jim Peña, John Pickett, Jim Santini, John Upton, James Wright. Ex-Officio Members Allen Biaggi, Amy Horne.

Absent:

Commissioners Pete Anderson, Cindy Tuck, Patrick Wright, Ex-Officio Member Leo Drozdoff.

It was noted that quorum was present.

2. Minutes of the October 12, 2007 Commission Meeting-(Action)

Mr. Rogich called for review and approval of the minutes of the Commission meeting of October 12. It was noted that the minutes of December 14 had been in the member's packets but had only been distributed the night before this meeting, so formal approval of these would be on the agenda for the next meeting.

There were no suggested changes to the minutes of October 12.

Motion--Mr. Rogich asked that the minutes be adopted as presented, and the vote was unanimous in favor.

Mr. Rogich now asked for the public comments (out of agendized order) as previously noted.

Public Comments:

Mr. Steve Kennedy spoke to Item 5.b.4 (Community Fire Safety Committee) and said he was submitting a Finding and Recommendation. He said it was time the Commission “threw the public a bone” and asked what kind of fire safety video they would like to see.

Laurie Kemper, representing Lahontan Regional Water Quality Control Board, was responding to Mr. Davidson’s previous request to provide permitting chronologies—she had provided five of these to the Commission today; four for projects in SEZs and one (Kirkwood Ski Area) for steep slopes. She said this was a starting place for the information needed by the expert’s workshop in February on sensitive habitats. The information provided today includes the exchanges between the Board and the applicants. Ms. Dargan asked if this was the first time the information had been made public and Ms. Kemper said it had been emailed to Dana Cole (Commission staff) and some others on Friday. At the committee meetings yesterday it was referred to, and the Wildlife Committee ended up getting a copy. The packet as given was finalized Friday night.

Mr. Davidson thanked Ms. Kemper and asked if from the documents one could determine when the permit was filed, and when it was granted? The answer was yes, but Mr. Davidson noted that he could not determine the exact terms and conditions of the permit from these documents. That was important, the ultimate conditions for the applicant. Ms. Kemper said that each of these cases were demonstration projects, and were subject to the specifics of the timber waiver that all of them were granted under. She noted that some conditions were in monitoring plans not specifically part of these documents.

Mr. Rogich now moved to:

Item 3.a, Status of Commission Work Plan

Dana Cole, staff to the Commission, said that the work plan was moving along smoothly. The main focus is currently in the committees developing Findings and Recommendations (F&Rs). Staff has developed an outline of the Final Report to the Governors, and the draft outline will be presented to the Commission at the Jan. 25 meeting. He referred to the tracking log in the Commissioner’s packets and stated at least 16 additional F&Rs had come in that were not on the log yet, they would be captured over the next couple of weeks. Other F&Rs in the Committees are also not on the log yet, but at future meetings there will be a log of all current F&Rs for the Commission’s review. Some will eventually come before the Commission, while others will be edited and/or combined, since there is some duplication (since sources don’t know what others have already submitted) and also some diametrically opposed recommendations. A weekly conference call between the Committee Chairs and staff has been instituted to try to reconcile the F&Rs. Duane Shintaku, staff operations chief, is running the conference calls, and the first one was last week and was very helpful.

Mr. Hicks asked if letters the Commission has received with F&Rs are included? Mr. Cole said that yes, these being incorporated. Even if not in the approved format, staff is working with the proposal and then putting it in the log.

Ms. Dargan said she'd like to run through the F&Rs process for clarity. Basically, anyone, anywhere, can submit a "proposed" F&R. Then it gets sent to staff, and Mr. Cole attempts to obtain it in the proper format, routes it to the appropriate committee, assigns it a tracking number and adds it to the log. Each finding that goes to the committees will be looked at by the Commission—the findings will not be stopped at the committee level, but the committees will recommend approval or other action to the Commission. To reiterate, no finding will be "stopped" at Mr. Cole's level or the committee level. The full Commission will ratify, reject or modify. She noted that some findings needed to come forward sooner than the last two Commission meetings—it would be unworkable to try to vote on possibly 100 findings at the last two meetings. So the format is designed so that the F&Rs can be agendaized as soon as they are forwarded from the committees, and they can receive a "consent agenda" type of approval, that is, a list of committee recommendations could be moved for approval as a group. Individual F&Rs should be debated at committee level. Individual F&Rs that have some objection by a Commission member can be separated out for discussion and a vote.

Mr. Cole added that he gives the committees preliminary assignments for the F&Rs, but the committee chairs might change these by agreement during the conference calls.

Mr. Grijalva noted that the committees may choose not to recommend any action on an item, or an F&R may come in too late or be duplicative.

Ms. Dargan noted that there was an "unofficial" cutoff date of Feb. 15—any F&Rs that come in before that date will be agendaized by the Commission, but after that, no guarantees. She considered that if an F&R came in as Mr. Grijalva outlined, with no action by the committee, that the Commission could vote to agree with the committee and thus vote "no action," or could possibly decide to take action on that F&R.

Mr. Grijalva questioned the process if an item came to the committee after a similar item had already been forwarded to the Commission. Mr. Cole referenced Mr. Santini's motion at the last meeting regarding a finding adopted provisionally, recognizing that more information could come in regarding the finding. Mr. Cole concluded that some reconciliation would have to take place, and this would have to be addressed—perhaps some findings could be adopted provisionally, with final adoption at a later meeting.

Mr. Davidson suggested that the formatting of the F&Rs takes time, and requested that counsel be available for word smithing so that action could be taken at the same meeting after necessary revisions. Mr. Cole said what might work best would be experts on particular subject on the committee doing the drafting. Mr. Davidson replied that they'd done some of that but what might be helpful would be some "drafting capability." Mr. Cole agreed and said that it would be helpful if all findings and recommendations "really read as F&Rs." Mr. Davidson said that he would leave it to Mr. Grijalva getting the counsel, since he'd been handling the committee so well.

Mr. Rogich asked how to handle findings that were significant but came in after all deadlines, they couldn't be ignored. Mr. Cole agreed, and said they would deal with it, but he hoped it wouldn't be a large number. Obviously significant findings would have to come before the Commission, and he didn't know if the committee review process would have to be short circuited. Ms. Dargan said that submitters should be aware of the deadline but if submissions came in they would still go to a committee, with the caveat that the Commission might deal directly with the F&R if it was significant enough.

Mr. Cole noted that the SEZ Workshop would occur after Feb. 15, and one of the charges of the workshop was to come up with F&Rs for the Commission. He thought they might in effect function as an ad-hoc committee for the Commission. Or conversely, said Ms. Dargan, people working on these issues didn't have to wait for the workshop to submit a finding, modifying it if the workshop information justified it. Mr. Cole noted that indeed there were already some SEZ findings in process.

Mr. Upton stated that his committee had already received a lot of input on SEZs and should look at moving ahead with a finding subject to modification based on new information. Ms. Dargan noted that there were three parallel processes running simultaneously—public input, developing F&Rs and writing a document (Final Report). The result was that the committees must feed their information forward as quickly as decisions can be made, as every decision must be cross-referenced to these other, parallel tracks.

Mr. Hicks noted that there were notices, web sites, etc. but wondered if the Commission should put out a press release inviting F&Rs from the public? Mr. Rogich said it was a good thought. Mr. Cole said that the Commission list serve was notifying 267 members of Commission activities, including an invitation to submit F&Rs. Mr. Grijalva added that the list serve members included groups, so that the number of individuals eventually receiving the notices was much higher. Mr. Cole agreed, and also agreed that if a press release was desired it could be done. Mr. Rogich said he recommended doing it.

Mr. McIntyre asked about "place holders" for F&Rs on the committee agendas. On the published schedules there isn't time to fit in exact items due to advance notice requirements. Mr. Cole said he had the same question, and asked legal counsel for an opinion. Each committee agenda now has an Item 4, "Other F&Rs" to cover those that came in after publication. Plus, what if the committee comes up with a finding during the meeting itself? Is that legitimate?

Christine Sproul(CA) and Robert Kilroy (NV) were present as Counsel to the Commission. Ms. Sproul noted that each committee could schedule such an item, but that items may not be ready for action at that meeting, because they wouldn't satisfy (California) public notice requirements. Mr. Kilroy agreed that the final action could be postponed until the next meeting. Mr. Rogich thought this was erring to the side of caution; and we probably needed to do that, but broad discussion could be done under "other F&Rs." It was not unusual. Mr. Grijalva worried about a time crunch under these circumstances, asking counsel if he could agendize action on F&Rs under topical or area

headings. Ms. Sproul thought he could, and said counsel would work with him. Mr. Rogich noted the importance of not taking action that could be challenged legally, but said that important items might be acted upon under emergency provisions of the Open Meeting Laws of both states.

Mr. Davidson wondered whether if some action was thought possibly premature it could be reagendaized at the next meeting. He asked if it might be a good idea to put everything that had already been approved on the agenda of the last committee meeting for public comment and reapproval so that there could be no question. Ms. Dargan thought this might be a good idea for the Commission as a whole. Mr. Cole thought it was a good idea for the committees. Ms. Dargan stated that the meeting of March 20-21 would be primarily occupied with last-minute changes to findings, approval of the draft Final Report, and as just stated, ratification of “everything,” which left four working meetings before that one. Workload analysis thus said 25 percent of the findings should be fed through at each meeting. Everyone should be aware of this. She understood 25 percent wouldn’t happen at the next meeting, but she projected some numbers of F&Rs and said to keep these figures in mind. Mr. Cole noted that at least some F&Rs were duplicative.

When there was no further discussion and no public comment, Mr. Rogich moved to:

4. Proposed Committee Structure Change-Discuss alteration of Scope of Work and membership of the gubernatorial Emergency Declaration committee; and change of Committee name to Legislative and Funding Policy Committee- (Action)

Ms. Dargan said that this Committee had met yesterday, and they would like to move this item down the agenda until after the Committee Report (5.c).

Motion—Mr. Hicks moved that the agenda item be heard after item 5.c, and Mr. Grijalva seconded. The vote was unanimous in favor.

Mr. Rogich now moved down the agenda to:

5. Committee Reports

a. Wildland Fuels Committee Report

Mr. Peña noted that the Committee had had a full day yesterday. There was good participation by committee members and the public and updates by working groups.

The Permit Streamlining group gave a good report (Mr. Peña continued) and had substantially completed items on permit streamlining for defensible zones, were moving more into wildland and urban interface and engaging the agencies. The group will consider SEZs together with this, rather than as a separate issue.

Air Quality working group gave a good report and then met the rest of the day perfecting their recommendations, the Committee expects that they will bring pretty much finalized recommendations at the next meeting.

Biomass was dealt with based on some committee member assignments from the last meeting, the next meeting should have a full discussion with the working group on recommendations, there should be a fuller discussion then on biomass utilization.

The Committee also reviewed two F&Rs, from Mr. Biaggi and also got through some discussion on an F&R from Richard Adams but will have to finalize that at the next meeting.

Committee member assignments produced a total of 11 F&Rs, in a number of different subjects and in various stages of development. One was ready for approval today, and all should be ready by the next meeting. He discussed the variety of areas covered. He expected five or six to be developed in the area of Air Quality by the next meeting.

The one ready to move forward today is related to reevaluating access needs for fuels treatments to be more effective and efficient. The Committee voted “Six or seven to one” to adopt this F&R.

Dr. Horne expressed concern with the process that had taken place in moving forward the F&R in question. The finding itself may be fine, but this was a process concern. She did not understand why other findings already distributed to the Committee had been set aside but this one was acted upon. She said that first time she saw the written finding was at 1:30 pm and there were not enough copies for all audience members. So certain agencies affected didn’t have the information needed for informed comment.

Mr. Rogich said his understanding was that the agencies were notified. Ms. Horne stated that the finding was not agendized, and that some agencies hadn’t seen the written copy before action was taken.

Mr. Peña said he needed clarification, if every finding that would be voted on would have to be agendized. What is on the agenda are topic areas, and it says that there will be discussion and action on each of those areas. He said that the finding in question was read to the audience, and they understood it, and in addition there was a public comment period before the finding was adopted.

Ms. Dargan said she would like to talk to counsel. Mr. Grijalva said what he was doing was discussing the list during the meeting and at the end the public had an opportunity to comment. They would not bring the F&Rs to the Commission until the public had heard them, but he also believed that they didn’t have to publish every F&R before voting on it; the subject matter is agendized, and if the public is interested in the subject they have the opportunity to comment on the F&Rs regarding the subject. Mr. Rogich agreed, saying unless counsel said otherwise, it was the Commission as a whole that would be adopting F&Rs. Mr. Cole also noted that the committees were merely making **recommendations**,

not final decisions. Ms. Dargan noted that when an F&R come to the Commission a full copy of the text will be in the Board packet, and available to the public. Mr. Peña thought it important to reemphasize that there was public comment and he thought they had followed the process that had been agreed to. Mr. Rogich agreed.

Mr. Rogich now called for Commission discussion and public comment on the F&R from the committee. Dr. Horne reiterated her concerns with the process, especially that there weren't enough paper copies for everyone. Mr. Rogich noted they would have another chance to comment. He said they would be taking action on the recommendation today. It was clarified that what would be approved today would be the Committee report, not the specific text of the F&R.

Ms. Sproul noted the question was whether the finding was being approved by the approval of the committee report—again there was general agreement that it was not. Mr. Peña recapitulated the discussion and appreciated Dr. Horne's concerns, concluding that it was appropriate to forward the F&R that they had adopted.

There was no public comment on this item.

Motion—Mr. Santini moved to accept the Wildland Fuels Committee Report, Mr. Grijalva seconded and the vote was unanimous in favor.

b. Community Fire Safety Committee Report

Working from a handout that was given to the Commission, Mr. Grijalva said he was submitting three F&Rs for the purposes of information, discussion and coordination with other committees, and not for Commission approval. He listed findings that:

- 1) The messages that have been given about compromises between Best Management Practices (BMPs) and defensible space are confusing to homeowners;
- 2) Overlapping Federal, state and local regulatory bodies have led to regulatory uncertainty in the Lake Tahoe Basin; the result has been inadequate defensible space, posing a fire risk on many public and private lands;
- 3) Overlapping Federal, state and local regulations have resulted in increased costs and delays in fuel treatments in the Lake Tahoe Basin.

Other recommendations included priorities of life, property and the environment in that order with respect to fire safety and prevention, (and Mr. Grijalva listed six more recommendations contained in the handout).

Mr. Rogich asked if Cal Fire staff were informed and amenable to taking over the direct protection responsibilities (number six on the list) in the basin? Mr. Grijalva they were, and had made a presentation on it.

Mr. Grijalva noted that F&Rs regarding no permit requirements for fuels treatment in the WUI were forwarded to the Wildland Fuels Committee.

Ms. Dargan asked about clarifying that “no permit requirements” would not be construed to apply to non-fuels treatment activities, like a new roof. She was assured the language of the F&R would be clear.

When Mr. Grijalva completed the list, Mr. Rogich asked about accountability for caring for land before it is received in trust. Mr. Grijalva said there had been significant discussion but no final conclusion or recommendation yet, for instance about urban lot owners being able to enter a contract to address the lot adjoining their property not at their own expense. He asked his committee members for comments on the issue.

Mr. Davidson said he was sure that this issue would come up at a future meeting; the fire services of the Basin have identified these unattended urban lots, many publically owned, as a major fire safety hazard. He said the committee would revisit the issue and certainly come up with recommendations. Mr. Grijalva noted all the options would be considered. Mr. Rogich said that a Nevada legislator was looking at legislation to prevent entities taking land in trust that they could not maintain.

Ms. Dargan added the context to the discussion noting that in California many entities, public and private, are struggling with this issue of the lot next door being untreated and a fire hazard. Many communities are considering or have already passed ordinances to deal with the problems under a public nuisance or public hazard mindset. She also noted that maintenance could be included in HOA agreements regarding green belts, for example, and also that forests also added special requirements and challenges.

Mr. Santini asked for clarification on the ownership issues, were these properties owned by municipalities? Ms. Dargan said it was a mix, Mr. Rogich added the Forest Service, (California-Tahoe) Conservancy, open space easements etc. were included in the discussion of this issue.

Mr. Pickett added some information about cases where the California-Tahoe Conservancy acquired ownership of a private lot, but 5 percent ownership is retained by the private person and 100 percent of the maintenance requirement is placed on the private person, because the lots are in HOA dues areas. The CTC didn’t want to pay dues. So now a person who cannot enjoy the lot is responsible for 100 percent of the maintenance—and they’re not interested in doing it. On top of that a registered forester must be hired to mark trees or make a recommendation about ground fuels. The private owner doesn’t own enough to use the exemption at sec. 757 of the Professional Foresters Law. So it’s a complex situation. And yet, Carnelian Bay has 87 acres of green belt that should be managed by a professional forester.

Mr. Upton estimated that approximately 3,500 parcels may have been bought back by the Federal Government under the Burton-Santini Act (Mr. Santini: “The Santini-Burton Act.” Laughter). There are approximately 6,000 owned by the Conservancy. So the

“other” category is not a large number. The preponderant number then are Forest Service and Conservancy. In response to a question from Ms. Dargan he agreed that almost all were under a half acre. Mr. Rogich noted many were non-developable, and Mr. Upton added some were developable but bought to maintain cover. Mr. Rogich concluded that he hoped the Commission would recommend the states should seek to pass legislative requirements for maintenance of lots.

Mr. McIntyre noted that the discussion here was getting away from the main thrust of the committee discussion, which was to let fire protection districts mark lots for fuel treatment. Letting them do it, not requiring professional foresters. Mr. Davidson added that marking doesn’t necessarily solve the problem.

Mr. Davidson said that it is important to note that the professional fire services have specifically designated it as one of the fire hazards we should take a look at it and we should take their recommendations seriously. Treated lots reacted well to limiting and slowing down flames during the Angora fire. The untreated lots did not have that advantage. There is a difference as fire service members pointed out to us. As Mr. Grijalva has said the issue is complicated not only by ownership but by designation and in some cases public agencies are exempt from certain laws that private owners must follow.

Mr. Grijalva continued discussing the Community Fire Safety Report and said that the committee heard from Ed Smith regarding a publication “Living with Fire.” They discussed some of the challenges in getting homeowners involved in maintaining defensible space. These challenges include confusion, mixed messages, and education. All agreed that what is needed is a consistent message from all agencies. Education should reach not only those who live here but also absentee owners. Other issues discussed:

- Wildland interface building standards
- The means by which the committee will process the various recommendations
- Public comment from Steve Kennedy
- Commissioner Hick asked that Mr. Grijalva offer a report on the activities of local agencies and communities
- Future concerns and issues
 - o Coordination between committees – the conference calls will be very useful
 - o Funding mechanisms and how some of the recommendations will be financed
 - o Consideration of recommending that the governors look for funding mechanisms such as special assessment districts or other solutions
 - o Water issues – water purveyors will be making presentations concerning water quality and availability
 - o Who will the commission’s recommendations be addressed to the governors, state legislatures, stakeholders, local governments and agencies?

Mr. Upton asked a question relating to BMPs and defensible space. He said that the Resource Conservation District inspects single family parcels and that the TRPA does inspections on multi-family and commercial parcels. The best way to avoid mixed messages is to have the fire districts drive the system. The fire districts around the lake might be able to help improve efficiency. The Resource Conservation District might be able to assist with staffing.

Ms. Dargan said that the science and technology work group touched on this subject in a recent meeting and decided that the question is what is the underlying management information system in the basin that feeds the process of inspections? The start of the discussion was if you are going to do defensible space inspections we want to make them as efficient as possible. A goal should be to keep track of the lots electronically and know what has been done year to year. Keep contact information in a data base or, even better, in a mapping GIS format that could be accessed on a public web-site. Currently, there is a lack of a centralized information system that can do the electronic side of the inspection process.

Mr. Upton said that an upfront investment would be necessary and a plan for continued maintenance. The question is where does the funding come from and how will it be collected?

Jennifer Q. of the Sierra Club asked about a process issue. She understands the need to hold both committee meetings at the same time but is concerned because it is difficult for one person to attend both meetings. She offered some feedback concerning F/R number 5 and number 2. She said that the language in #2 is suggesting that there is a substitution of NPA an SPPN permits requirements. She would like to point out that it amounts to comparing apples and oranges. They are regulations telling you how to do an environmental analysis where the others are permit requirements telling you what to do on the ground.

Leslie Higgins of Tahoe Resources Conservation district commented on the proposal for defensible space evaluations. She said that they have been distributing information on defensible space and are looking forward to merging their efforts with other agencies in the basin. She wanted to offer the caution, though, that her group may not have the resources to complete defensible space work in the required areas. Currently they are only funded for BMP work and have a year long waiting list.

MOTION

To accept the Community Fire Safety Committee report.

Passed unanimously.

c. Gubernatorial Emergency Declaration Committee Report

Ms. Dargan offered a report of the meeting.

- The committee will offer a F/R at the next scheduled commission meeting relating to a request to the governors of California and Nevada
 - o Why the basin would be deserving of an emergency declaration
 - o Past cases
 - o The authority and legal argument
 - o Funding recommendations
 - o Specifics on the items requested
 - o Timeframes for duration of the emergency

MOTION

To accept the broad overview of the proposed committee structure that will be provided as it relates to the Emergency Declaration Committee

Passed unanimously.

4. Proposed Committee structure change. Discuss alteration of scope of work and membership of the Gubernatorial Emergency Declaration Committee and change of committee name to Legislative and Funding Policy Committee

Ms. Dargan said that because there are some F/Rs coming forward that do not fall neatly into either of the two standing committees, it makes sense that the third committee be adjusted to accommodate these F/Rs. She asked if the commission would consider chartering the committee to address issues such as:

- Big picture funding
- Legislative and organizational structure, i.e. TRPA contract and SNPLMA funding

Mr. Rogich said that it is important to have a fiscal overview and the commission will probably need some assistance from accounting and budgeting professionals. Mr. Pickett agreed and said that in accounting a full fledged audit can be very costly and time consuming.

Mr. Rogich stressed the importance of taking decisive action. He said that some of the options for recommendations might be:

- Look at the mission statement of the TRPA and explore some the options that they might be willing to explore

- Establish a sub-committee that will meet every year to monitor and report to the governors and legislatures concerning ongoing progress in the basin
- Continue reaching out to congressional delegations of both states.

Ms. Dargan summarized the motion as she understood it:

- The committee will consist of the Commission Co-chairs, economic technical experts, one from California, one from Nevada, and one from a federal agency. Commissioners Patrick Wright, Bud Hicks, Ron McIntyre, and John Pickett will also serve on the committee.
- This group would be chartered with the understanding of what is needed in terms of legislative and financial support to accomplish the commission's goals.
- It might be called a legislative big policy structure.

Mr. Rogich said that it will basically produce a business plan.

MOTION

To rename the Gubernatorial Emergency Declaration Committee the Legislative and Funding Policy Committee and to charge the committee with making recommendations to the commission on legislative and funding matters.

Passed unanimously.

6. Working Groups Report

Mike Vollmer offered an update on some of the working groups in the basin.

- A workshop on SEZ and steep slopes will take place on January 17.
- Project Implementation work group has met – a three day retreat is planned to continue the process
- A meeting will be set up with TRPA and basin fire chiefs – a report will follow
- a F/R on defensible space will be submitted

Ms. Dargan offered a report of the work of the Science and Technology work group which is chaired by Patrick Wright. The group includes Dr. Amy Horne, representatives from Cal Fire, TRPA, the Science Consortium, and the Fire Safe Council. A number of F/Rs will be submitted on subjects such as fire modeling research needs, assessment and modeling, grant administration, and funding for fuel treatments.

Dana Cole made a comment on behalf of commission staff. He said that the full meeting schedule is available on the web-site and that many of the documents can also be found there. He encouraged all commission members to visit the web-site.

Mr. Biaggi said that he has provided the commissioners with an overview of the SNPLMA process and that it can be found in this meeting's packet.

Ms. Dargan said that the final report outline would be available next meeting and reminded the commission members that we will need to schedule a group photo.

7. Public Discussion

No public comments were offered.

8. Adjournment

Kate Dargan adjourned the meeting at approximately 12:05 pm.